

§ 541.506

in § 541.501(e), are not exempt as outside salesmen. They are primarily engaged in delivery or service functions, not in outside selling.

§ 541.506 Nonexempt work generally.

Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 20-percent limitation on non-exempt work.

Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 Trainees, outside salesmen.

The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside

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salesmen who are not actually performing the duties of an outside salesman (see also § 541.506).

SPECIAL PROBLEMS

§ 541.600 Combination exemptions.

(a) The divisions' position under the regulations in subpart A of this part permits the "tacking" of exempt work under one section of the regulations in subpart A to exempt work under another section of those regulations, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's function (regardless of which occupies most of his time) he must meet the salary requirement for executives. Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the hours worked in the workweek by the nonexempt employees of the employer, whichever is the smaller amount.

(b) Under the principles in paragraph (a) of this section combinations of exemptions under the other sections of the regulations in subpart A of this part are also permissible. In short, under the regulations in subpart A, work which is "exempt" under one section of the regulations in subpart A will not defeat the exemption under any other section.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$250 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least \$250 a week is exempt if

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he is paid at least prorata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least \$250 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least \$250 and his daily base rate is at least one-sixth of such weekly base rate. The higher minimum salary tests will be effective on April 1, 1975.

[40 FR 7094, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Section 541.601 was revised at 46 FR 3016, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.601 set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under § 541.1, § 541.2, or § 541.3 and who is employed at a base rate of at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 is exempt if he is paid at least prorata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least \$320 per week beginning February 13, 1983 and his daily base rate is at least one-sixth of such weekly base rate. The higher minimum

salary tests will be effective on February 13, 1981, and February 13, 1983, respectively.

§ 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

(a) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multiunit retailing operation, such as a chainstore system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multi-unit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. Such employees are subject to the 20-percent limitation on nonexempt work.

(b) With respect to executive or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a) 1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.